In the High Court of Judicature at Madras

Dated: 05/02/2003

Coram

The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice N.V.Balasubramanian

Writ Appeal No.2307 of 2002
and Writ Appeal Nos. 2308 to 2310 of 2002

1. Jini Dhanrajgir
2. Ranjit Jesudasan
3. Vikram Jesudasan ..... Appellants

-Vs-

1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai 600 003.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai 600 008.

3. C.S.Devaprakasam

4. Malar Foundation Private Ltd.,
New No.9, Ranganathan Street,
Ganesh Nagar, Chennai 600 042. ..... Respondents

Writ appeals filed against the common order dated 28.06.2002 in Writ Petitions No.23191 to 23194 of 2002 on the file of this Court.

In all appeals --

!For appellants : Mr.R.Gandhi,
Senior Counsel, for
Mr.George Cheriyan

^For respondents : Mrs.P.Bhagyalakshmi for R1
Mr.V.Perumal for R2
Mr.Sathish Parasaran for R3
No appearance for R4

:JUDGMENT

(Judgment of the Court was delivered
by R.Jayasimha Babu, J.)

Appellants are aggrieved by the permission granted on 12.03.2001 by the first respondent for the sub division of old door No.5, New No.11 , Dr. P.V. Cherian Crescent, Egmore, Chennai, belonging to the third respondent and his children, into four plots and the separate planning permissions granted on 16.05.2001 to put up four dwelling units in buildings consisting of ground and first floor in each one of the sub divided plots. The fourth respondent is the builder. The first respondent granted the impugned permissions as the delegate of the second respondent which has framed the Development Control Rules (Rules) under the Tamil Nadu Town and Country Planning Act, 1971.
2. Appellants are close relatives of the late wife of the third respondent, one of them being her sister, others being her nephews. The plots with buildings owned by them, and the plot on which a building had existed and is now sub divided, are part of the larger property that was owned by late Dr. P.V.Cherian, a former Governor, father of the first appellant, and father in law of the third respondent. In the plot owned by the first appellant which abuts the Cherian Crescent formerly known as Victoria Crescent, two large multi storeyed apartment complexes have been constructed. The construction of a similar multi storeyed building exceeding two floors being impermissible on the plot belonging to third respondent and his children, by reason of the width and road abutting it being less than 30 feet, sub division had been sought and obtained in order to put up four separate buildings consisting of ground plus first floor.

3. Old door No.5 measures East 90' West 133', South 148', and North 141'. A portion of the eastern 90' abuts the road leading to it and the neighbouring plot, from the Cherian Crescent. The approved sub division provides for a 12' wide passage (carved out of the old No.5 New No.11) from part of the portion abutting that road and provides access to the sub divided plots B, C, D, the access to plot A being from the remaining portion of the original plot abutting that road. Plot A measures East 45', West 38.16' + 2'.13", South 79'.6" and North 69'.3". Plot B measures East 33', West 50'.3" + 12', South 91'7.5." North 79'.6". Plot C measures East 55'.1.5", West 53'.9", South 51 ' 8.5", North 55'.8". Plot D measures east 50'.3" + 12', West 79'.3", South 56' 7.5" and North 51'.8.5." The road coming in from the Cherian Crescent through the larger property that was owned by Dr.P.V. Cherian abutting that crescent, and which is a 'L' shaped road, was apparently laid when the property was divided among his wife and children after his demise, and measures about 264' in length, has a width of 24' at it's narrowest point and 26.8" at it's widest.

4. The area occupied by that road is 2 grounds - 1 ground is 2400 sq. ft. - and 674 sq. ft., or 5474 sq. ft., as seen in the extract from the permanent Land Register for 1986. This area is described therein as 'common road' belonging to the widow, son and three daughters of late Dr.P.V.Cherian.

5. Rule 4(d) of the Rules sets out the requirement for site approval and provides that "No piece of land shall be used as a site for the construction of a building for any development if the Authority considers that

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(i) to (v) .....(Not relevant here)
(vi)if the site does not abut any existing public or private street forming part of a layout sanctioned under the provisions of the relevant local body act.
(vii) If the site does not abut a public street of not less than 7.2 metres in width for layouts and not less than 4.8 metres in width for sub divisions not amounting to layouts.
Explanation: The sub-division shall not amount to a layout if the number of plot is less than eight and the total extent of the site is less than three thousand square metres.

6. The sub division of old No.5 New No.11 which has a total area of about one thousand and six hundred square metres into four plots thus does not constitute a layout, and the minimum required width of the street abutting it, is 4.8 metres or 15'.74". Even if it does constitute a layout, the width of the abutting street is more than the prescribed minimum of 7.2 metres or 23'.62".

7. Rule 19 of the Rules which is found in Part III titled as " General Provisions" is captioned as "Layout and sub-division". Rule 19(a) is relevant here. Rule 19(b) is applicable only for 'Special Buildings' which is defined therein to be "(a) a residential or commercial building with more than two floors; or (b) a residential building with more than four dwelling units; or (c) a commercial building exceeding a floor area of 300 square metres, and is not attracted here, as the buildings now permitted to be constructed on the four sub divided plots are residential buildings with ground plus first floor and thus do not exceed two floors, and the number of dwelling units in each of these buildings do not exceed four.
Rule 19(a) reads thus:
" (a) The laying out and sub-division of land for building purposes shall be carried out only in accordance with the provisions specified below.
(i) The width of the streets and roads in the layouts shall conform to the minimum requirements given below and be in conformity with the development plan, if any, for the area except in group housing, flats or in areas reserved for Economically Weaker Sections.

THE TABLE
Description
Minimum Width
Remarks

A. Passage:
(i) In areas of Economically Weaker Section and for Continuos building area:
(a) For single plot
(b) For two to four plots

(c) For more than four plots small passage is not permissible.

(ii) When it is intended to service upto two plots (length of the passage

should not exceed 40 metres)

(iii) when it is intended to serve upto ten plots (length of the passage should not exceed 80 metres)

(iv) when it is intended to serve upto ten plots (length of the passage should not exceed 100 metres)

1.0 metre(40")
1.5 metre (5')

3.0 metres
(10')

3.6 metres
(12')

4.8 metres
(16')

The passage will remain private

The passage will remain private

-do-

-do-
B. Streets and Roads:
(i) Streets intended to serve not more than 10 plots and / or subject to a maximum length of 120 metres

(ii) Streets intended to serve not more than 20 plots and /or subject to a maximum length of 240 metres.

(iii) Roads of length more than 240 metres but below 400 metres

(iv) Roads of length between 400 metres to 1,000 metres

(v) Roads of length more than 1,000 metres

7.2 metres
(24')

9.0 metres
(30')

12.0 metres
(40')

18.0 metres
(60')

24.0 metres (80')
All streets shall become public. The land owners/ developers shall hand over these street/roads portion through a deed to the local authority concerned, after forming the road as per specifications given under relevant section of Chennai City Municipal Corporation Act.

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A street shall become public. The land owners/ Developers shall hand over these streets/roads portion through a deed to the local authority concerned, after forming the roads as per specification given under relevant section of Chennai City Municipal Corporation Act or Panchayat Act or Tamil Nadu District Municipal Act.

-do-

(Rest of the Table as also
of 19(1) is not set out

Sub paras (ii), (iii),
as not being

(iv), (v), (vi), and (vii)
necessary for this case)

8. The Table in Rule 19(a)(i) refers to 'Passage', in addition to 'Streets and Roads'. Rule 19(a)(i) requires that 'the width of the streets and roads in the layouts shall conform to the minimum requirements given below". That part of the table specifying the minimum width of streets and roads is therefore applicable only to layouts and not to sub-divisions not amounting to layouts. Only the 'Passage' referred to in the Table would therefore have to be regarded as being applicable to sub divisions, though it may also apply to layouts where there are passages fromthe streets and roads in the layout.

9. The 'Passage' as also the 'Streets and Roads' referred to in the Table are to be laid out within the plots to be sub divided or formed into layout. The width of the passage laid out in the old No.5, new No.11 is 12' is less than 80 metres and is intended to serve four plots. It satisfies the

requirements of the Rule.

10. Even if it is possible to regard the stipulation regarding width of passage as also of the streets and roads as referring to the approach to the plot which is sub divided or in which the layout is formed, the width of the common road from the Cherian Crescent being 24' at it's narrowest point, and it's length being less than 120 metres and that road being intended to serve not more than ten plots, the requirements of Rule 19 satisfied.

11. Learned senior counsel for the appellants contended by relying upon Rule 4(d)((vii) of the Rules that no plot can be used as a building site unless it abuts a public street. This argument is clearly untenable. Rule 4(d)(vi) of the Rules refers to 'Public or Private streets', such private streets forming part of a sanctioned layout. The Table under Rule 19(a)(i) refers to passages which remain private and provide access upto ten plots, provided the length of the passage does not exceed 100 metres and it's width is not less than 16'. Sub division not amounting to layout need only provide for such passage which would remain private. Rule 4(d)(vii) must be read with Rule 4(d)(vi) and Rule 19(a). A plot, in order to constitute a building site need not necessarily abut a public street, but may abut a private street or passage. All that is required is that the site must be accessible by a passage or street whether private or public of the prescribed minimum width.

12. The 'L' shaped Road described as 'Common Road' in the Land Register, whether regarded as public street or as private street or passage provides access to the plot owned by the third respondent and his children within which a passage of prescribed width has been provided for the sub divided plots. Three of the sub divided plots are to be accessed through that passage which would remain private, while the other has access also from the 'Common Road'. All the sub divided plots thus abut a passage which is linked to the 'Common Road'. That common Road is an open road opening into the Crescent and it is not the appellants' case that access to that Road is in any way restricted. That road apparently has been used as a public street, with the public having a right of way over the same. Even if it is regarded as a private road, that would not in any way render the impugned permissions illegal.

13. Counsel also contended that these buildings are special buildings as they are to have a basement. Even if they do have basement that basement is not a separate dwelling unit, and the basement is not a floor contemplated in Rule 19(b)(i)(a) which refers to 'a residential or commercial building with more than two floors'. A basement is not ordinarily regarded as a floor, while computing the number of floors in a building. The count commences with the ground floor, the floor above that being termed first floor and so on. The reference to 'more than two floors' in the Rule is to the floor above the ground and first floor.

14. It was also submitted that by the sub division and construction of four dwelling units on each of the sub divided plots 16 dwelling units will come up, though that number of units could not have been built, had the plot remained as it was. That result of the sub division does not make it illegal.

It is open to the owner to exploit his property in the most advantageous way possible within the framework of the law. It is the duty of the statutory authority to accord the sanctions sought if the requirements of the law have been met.

15. It is evident that the first appellant after having exploited her property in the best manner possible by putting up two 'special buildings' is only seeking to obstruct and prevent exploitation in the most advantageous manner possible by the third respondent and his children, of their property.

16. We have examined the appellants' case in detail as the learned single Judge had declined to examine the same on the ground that appellants should implead themselves in the suit that the third respondent had filed to injunct the authorities, who had at the appellants' instance sought to interfere with the construction, and agitate their case in that suit. The rejection of the writ petitions on that ground was not proper. We have, however, found that impugned permissions are not vitiated by any illegality.

17. The appeals are dismissed. WAMPs. No.3935 to 3938 and 4230 to 4233 of 2002 are dismissed.

(R.J.B.,J.)(N.V.B.,J.)
05.02.2003

Index : Yes
Website: Yes

To
1. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai 600 003.

2. The Member Secretary,
Chennai Metropolitan Development
Authority, Chennai 600 008.

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